**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 6732 of 2003**
**With**
**CIVIL APPLICATION NO. 14470 of 2006**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**RAJESHKUMAR GUNVAT PANDYA - Petitioner**
**Versus**
**MUNICIPAL CORPORATION OF CITY OF JUNAGADH & 1 - Respondents**

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**Appearance :**
MRS SANGEETA N PAHWA for Petitioner:
MR HS MUNSHAW for Respondent: 1,
MR KETAN J DWIVEDI, LD.AGP for Respondent: 2,

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**CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**

**Date : 27/07/2007**

**ORAL JUDGMENT**

1. Rule. Shri. Munshaw, learned counsel for the

respondent No.1 and Shri. KJ Dwivedi, learned AGP for respondent No.2 waives service of rule on behalf of respondent no.1 & 2 respectively.

2. The petitioner has approached this court under Article 226 of the Constitution of India challenging the order dated 5/5/2003 passed by the Commissioner, Junagadh Municipal Corporation, where under the promotion order of the petitioner dated 17/12/1997 was set aside and he was ordered to be reverted to the post of driver. Facts in brief deserves to be set out as under leading to filing of this petition.

3. Petitioner was at the relevant time serving in the Junagadh Municipality as driver and he came to be promoted to the post of Checking Inspector. The action of the Municipality in promoting the petitioner to the post of Checking Inspector was stayed by concerned Collector in exercise of his power under section 258 (1) of the Gujarat Municipalities Act. The petitioner moved the concerned Labour Court for redressal of his grievance. The Collector disposed of the proceedings on 13/8/1998 against the petitioner which was challenged by the petitioner by preferring Special Civil Application No. 5272 of 2002. This petition of the petitioner came to be disposed of by this Court (Coram: M.S.Shah, J) vide order dated 19/9/2002, by quashing and setting aside the orders at Annexure – A & E to

the petition passed by Collector and directed Collector, Junagadh to hold proceedings de-novo under section 258 (1) of the Act in respect of Resolution dated 15/3/1998 of the Junagadh Municipality regarding agenda item No. 114 about petitioner's promotion as Checking Inspector after giving all the concerned, including the petitioner, the Municipality, original applicant Abdul Majid Soratia and employees likely to be affected by the decision, an opportunity of being heard. Collector was directed to take final decision as expeditiously as possible and in any case by 31/12/2002. Pursuant to this order the concerned collector passed an order on 28/3/2003 indicating that the Junagadh Municipality was converted into Corporation w.e.f. 15/9/2002 and therefore the applicability of section 258 (1) would not be invoked so far as the Corporation is concerned. It deserves to be noted that when this Court (Coram: M.S. Shah, J) passed the order in Special Civil Application No. 5272 of 2002 on 19/9/2002, Junagadh Municipal Corporation had come into existence, but this fact was not brought to the notice of the Court. The Collector has stated that the entire proceedings therefore should be decided by the Corporation in accordance with the provisions of BPMC Act. The Commissioner, Junagadh Municipal Corporation passed an order on 5/5/2003 setting out the backdrop and canceling the promotion

order of the petitioner vide order dated 17/12/1997 based upon their advocate's opinion that it was an irregular promotion order. This order of the Commissioner is impugned in the present petition.

4. Ms. Pahwa for the petitioner has mainly contended that the Collector was actually to decide the mater de-novo and once the order of the Collector was quashed and set aside the original resolution of the Municipality came into operation. She submitted that since the Municipality is now merged into Corporation the applicability of Section 258 (1) was not capable of being invoked or applied. No party sought any clarification from this Court and in view of this it was not open to the Commissioner to decide validity of the order passed in promoting the petitioner which was approved by General Body of the Municipality, based upon an opinion of the advocate. Therefore, she submits that the order of the Commissioner being passed without any authority of law or any sanction of law, same deserve to be quashed and set aside. She submits that the Commissioner has no power under BPMC Act subsequently to invoke the order of the Municipality, and therefore the order of the Commissioner deserves to be quashed and set aside.

5. Shri. Munshaw submitted that the Municipality

had been converted into that of Corporation and therefore the Commissioner has become the appointing authority and if any irregularity is committed in appointment it was always open for the Commissioner to rectify the same. Shri. Munshaw has submitted that the order impugned can be treated as an order passed by appointing authority rectifying the mistake in appointment as the Corporation had as successor to Municipality enjoyed the power of appointing authority and this order can be therefore sustained unless it is proved that the petitioner was rightly promoted.

6. This Court heard learned counsels for the parties and perused the record. The fact remains to be noted that the statement made in the rejoinder regarding eligibility have not been controverted, and the order passed by the Collector deserves to be taken into consideration as the aggrieved party had said that at the relevant time objections were not taken for some political reason. In fact he did not have any objection if the petitioner was continued on promotional post. It also deserves to be borne in mind that the Commissioner has not pointed out in his order as to how the order of promotion of the petitioner was irregular. The advocate's opinion which is relied upon for passing the impugned order was not supplied to the petitioner. The Commissioner

naturally could not have exercised power under Section 258 (1) of the Gujarat Municipalities Act. It was therefore appropriate for the concerned authorities to seek clarification from this Court in view of the peculiar facts & circumstances of conversion of the then Municipality into that of Municipal Corporation. The impugned order passed by the Commissioner therefore can not be sustained.

7. In view of this, it can be well said that the impugned order is not sustainable. However, this observations will not come in the way of the Commissioner if he so choose to exercise his power as an employer and appointing authority to examine whether the petitioner was eligible to be continued as Checking Inspector. With these observations the order of the Commissioner dated 5/5/2003 is quashed and set aside. The petition is partly allowed accordingly. Rule made absolute to the aforesaid extent. No cost.

8. In view of the order passed in Special Civil Application No. 6732 of 2003, no order is passed in Civil Application No. 14470 of 2006 and the same is accordingly disposed of. Notice discharged.

[ S.R. BRAHMBHATT, J ]

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